



Drawing Amendments

Please amend Fig. 5 of the drawings as shown in red below:

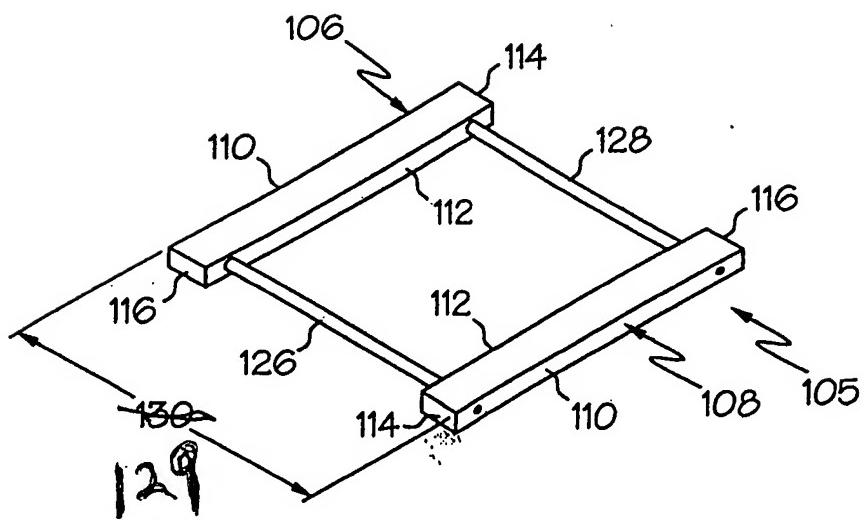


FIG. 5

Remarks

The forgoing amendment has been made after a careful review of the present application, the references of records, and the Office Action dated September 27, 2005. In the Office Action, the examiner correctly related the telephone conversation between applicant's attorney Robert Marsh and the examiner made September 19, 2005 in which the applicant's attorney elected, without traverse, to prosecute claims 1 through 12, thereby electing to prosecute Group 1 out of two groups designated by the examiner. Claim 13 was therefore withdrawn from examination.

The drawings have been amended. The specification describes two elements bearing indicia number 130 and therefore Fig. 5 has been amended to change the indicia number for the spacings between the outer ends of the paddles from 130 to 129, to thereby eliminate the double use of the indicia number 130.

The text was also amended to conform to the amended drawing of Fig. 5. Two other amendments, which the applicant believes do not involve new matter, were also made to the specification as will be further explained in these remarks. Claim 1 was canceled and significant amendments were made through most of the remaining claims. New claim 14 has been added clarifying that the marinating machine includes an improvement in which the drive assembly drives only the first axle and drives the first axle in a rotary direction that will apply an upward component of force to the surface of the drum. Similar language is added to claim 3. In support of this new element, the applicant draws the examiner's attention to page 4 of the specification, lines 10 through 12 in which it is stated that "it is preferable to drive the axle which applies a vector of force having an upward component adjacent the drum instead of the axle which applies

a downward component of force thereto." Although the specification does not speculate as to why it is preferable to drive the axle for which a upwardly directed component of force is applied to the drum, the inventor, David Curtis, submits his Declaration herewith in which he speculates that the mass of food material retained within the drum as the drum rotates is moved by the paddles upwardly along one side of the drum such that the weight of the food matter is concentrated over the shaft below the rising side of the drum. Accordingly, there is a greater amount of force applied to the axle adjacent of which the wall of the drum is rising rather than falling and is therefore more desirable to apply driving power to this shaft than to the shaft adjacent the wall that is dropping. The amendment to the paragraph that begins on page 10 and runs to page 11 changes the word "clockwise" to "counterclockwise" and the word "counterclockwise" to "clockwise" so that the direction of movement of the drum will be consistent with the preference described on page 4 thereof.

In the Office Action, the examiner rejected claims 5 through 10 under 35 USC 112 as not being supported by an enabling specification. Claims 1 through 4 were rejected under 35 USC 102 (b) as being anticipated by Gontero, and claims 11 and 12 were rejected under 35 USC 102 (b) as being anticipated by Becheiraz.

The applicant hereby traverses the rejection of amended claims 2 through 4 and, to the extent applicable, new claim 14 under 35 USC 102 (b) as being anticipated by Gontero. Gontero discloses a machine having a rotating drum with the drum sitting upon a pair of parallel spaced apart cylindrical rollers, one of which, shaft no. 4 is driven by a motor 5. Although Gontero does disclose a drum, the applicant submits that the drum of Gontero is not an analogous art because it is not apparent, from reading the

specification, that the machine of Gontero does not encounter the problems that are encountered with rotating the drum of a marinating machine. As explained on page 3 lines 2 through 8, existing marinating apply rotating force to both of the drive shafts thereof because the outer surfaces of the marinating machine are often greasy and wet. The surface becomes greasy because the operators handle the drum and the food products that are inserted therein and become wet because the temperature of the food products therein cause moisture in the air to precipitate out and condense on the surface of the drum. The Gontero reference fails to address the difficulties incurred by marinating machines that are solved by the present invention.

The applicant further traverses this rejection in that amended claim 3 and new claim 14 both clarify that the power from the motor is to apply only to the axle rotating in a direction wherein the rotation will apply an upward component of force to the outer surface of the drum. The advantages of applying force to one roller as opposed to another is not appreciated in the Gontero reference. Accordingly, amended claims 2, 3, 4 and new claim 14 define over the Gontero reference and are allowable.

The applicant also traverses the rejection of claims 5 through 10 as not having an enabling disclosure under 35 USC 112. In his rejection, the examiner states that although the specification describes several embodiments of paddle assemblies that "no machine having first and second paddle assemblies is described." The applicant affirmatively states that this position of the examiner is not well founded. On page 4 of the specification, beginning with line 15 and extending through line 11 of page 5, the specification describes a paddle assembly consisting of a first and second paddle and the method of assembling thereof held together by flexible rods and that "the invention

further includes a second paddle assembly, the second paddle assembly having paddles with a width different than the first paddle assembly for providing a different drop elevation than that of the first paddle assembly." For the quoted material, see page 5 lines 8 through 11. Also, beginning with page 11 line 8 and extending through page 12 line 21, is an extensive discussion of a first paddle assembly for use with the machine. Thereafter, beginning on page 12 line 22 the specification describes a "second paddle assembly 130 consisting of a pair of paddles 132, 134 may be provided for use with the nylon rods 126, 128." The discussion of the second paddle assembly continues to page 12 line 16. Furthermore, the claims themselves are a portion of the disclosure and the claims in issue, namely claims 5 and 7 clearly recite a marinating machine having a first paddle assembly and a second paddle assembly. Accordingly, a marinating machine with at least two paddle assemblies has been clearly disclosed. If the examiner's primary objection is that the disclosure, as drafted, failed to recite in a single sentence that "the marinating machine has both a first and second paddle assembly," those words are added by the amendment to page 5. The addition of these words, however, does not constitute new matter since a machine having first and second paddle assemblies has in fact been disclosed. Accordingly, the applicant submits that rejection of claims 5 through 10 as not being adequately disclosed under 35 USC 112 must therefore be withdrawn.

The applicant also traverses the rejection of amended claims 11 and 12 under 35 USC 102 (b) as being anticipated by Becheiraz. The Becheiraz reference discloses a tank having a plurality of agitators therein where the agitators are planar members spaced along the length of a rod fitted within a generally rectangularly shaped tank of a

processing vessel. Claim 11, upon which claim 12 is dependent, on the other hand, states that the paddle assembly of the invention is for a marinating machine having a cylindrical drum and includes a first paddle and a second paddle with the paddles having opposing planar surfaces and includes means for retaining the planar surfaces of the first paddle generally co-planar with the surfaces of the second paddle and a compressible means for urging the outer ends of the first paddle away from the outer end of the second paddle wherein the outer ends are urged against the inner surface of the drum of the marinating machine. The paddles of the Becheiraz reference are arranged parallel to one another such that the surfaces thereof are not "generally coplanar" as required by amended claim 11. Furthermore, the Becheiraz reference doesn't include "compressible means for urging said outer end of said first paddle away from said outer end of said second paddle" as also required by claim 11. Accordingly, claim 11 clearly defines over the Becheiraz reference and is therefore allowable over the reference. Claim 12, which is dependent upon claim 11 and adds that the compressible means comprises a semi-rigid rod, is allowable for the same reason as claim 11.

With the forgoing amendment, the applicant believes that all the rejections of the examiner have been overcome and that the claims are now in condition for allowance. Favorable reconsideration and allowance is respectfully requested.

Respectfully submitted,



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